



MCKENNA

June 30, 2026

Board of Zoning Appeals
Village of Lake Orion
21 E. Church Street
Lake Orion, Michigan 48362-3274

Subject: **Variance from Zoning Ordinance Requirement Review** (Plans received June 2, 2026)
Location: **301 Park Avenue – Parcel ID# 09-03-431-012**
Zoning: **RL - Lake Single Family Residential District**

Dear Board Members:

We have reviewed the above-referenced variance application submitted by Paul Tracey (the “Applicant”) who is the property owner of the cited residence. Mr. Tracey is proposing a variance from the Village’s Zoning Ordinance, Section 17.04.B, that would allow the applicant to expand a non-conforming structure in order to construct a second story addition to the home.

LOCATION AND PROPOSED PROJECT

The subject lot is approximately 3,950 square feet in area and is occupied by a single-family principal residence. The lot is located on the intersection of Park Avenue and Central Drive, and is zoned the RL, Lake Single Family Residential District. An aerial photo of the subject site and the surrounding area is provided for context.

The Applicant proposes to install a second story addition to the house. The proposed addition would not exceed the zoning ordinance height limit of 30 feet. The existing dwelling is currently non-conforming to the Village’s zoning ordinance for the following: side yard setback regulations, lot width, minimum lot area, and minimum floor area per dwelling unit.

The site plan indicates the current dwelling is 570 square feet which is below the 900 square foot minimum for the RL Lake Single Family Residential zoning district. The proposed second story addition would double the livable square footage of the dwelling (1,140 sf), bringing the structure further into compliance with the Village’s zoning ordinance.



ZONING ORDINANCE STANDARD AND REQUESTED VARIANCE

ARTICLE 17 – Nonconformities
SECTION 17.04 – Nonconforming Structures
SUBSECTION B – Enlargement, Extension or Alteration

HEADQUARTERS
235 East Main Street
Suite 105
Northville, Michigan 48167

O 248.596.0920
F 248.596.0930
MCKA.COM

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Section 17.04.B.2.b of the Village of Lake Orion Zoning Ordinance prohibits the vertical (height) increase of a non-conforming structure.

Section 17.04 NONCONFORMING STRUCTURES

- A. A. Continuation of Nonconforming Structures. Where a lawful structure exists at the effective date of adoption of this Ordinance or amendments hereto that could not be built under the terms of this Ordinance by reason of restrictions on area, lot coverage, height, yards, its location on the lot, or other requirements concerning the structure, such structure may be continued as long as it remains otherwise lawful, provided that, unless otherwise noted in this Article, no such nonconforming structure may be enlarged or structurally altered unless such modifications conform to the provisions of this Ordinance for the district in which it is located.
- B. Enlargement, Extension or Alteration
1. Increase in Nonconformity Prohibited. Except as specifically provided in this Article, no person may engage in any activity that causes an increase in the extent of any nonconformity. For example, physical alteration of a structure or the placement of new structures on open land is unlawful if such activity results in:
 - a) An increase in the total amount of space devoted to a nonconforming use, or
 - b) Greater nonconformity with respect to dimensional restrictions such as setback requirements, height limitations, density requirements, or other requirements in the district in which the property is located.
 2. Permitted Extension. A nonconforming structure may be extended if such extension does not increase the extent of the nonconformity. A nonconformity shall be considered increased if any of the following conditions exist:
 - a) The structure's horizontal encroachment into required setbacks is increased, either by reducing the setback of any part of the structure or by increasing the amount of the structure that encroaches,
 - b) The vertical (height) dimension of a bearing wall is increased at a nonconforming setback, even if the same horizontal nonconformity is maintained, or

The Applicant is requesting a variance from the zoning ordinance requirement.

VARIANCE STANDARDS FOR APPROVAL

Per the *Michigan Zoning Enabling Act, P.A. 110 of 2006, as amended*, the Board must, prior to acting on a requested variance, consider and make findings regarding several factors. Specifically, in Section 19.04.D.1 of the Village's Zoning Ordinance, the Board may grant a variance upon a finding that a practical difficulty exists. A finding of practical difficulty exists when the applicant has demonstrated that all of the zoning ordinance criteria exist.

Each of the required standards is described below followed by an analysis of whether those conditions exist in this particular case.

- A. Strict compliance with restrictions governing area, setback, frontage, height, bulk, density or other non-use matters will unreasonably prevent the owner from using the property for a permitted purpose or will render ordinance conformity unnecessarily burdensome.

Applicant Response:

"The request to add a 2nd story will not change the foot print to the existing building (building straight up). The purpose is to increase the square footage from 570 to 1,140".



Planner Response:

The applicant is proposing only to build upward and will not expand or increase the nonconformity in any other way. The increase in livable floor area brings the subject structure further into compliance with the Village Zoning Ordinance requirements.

B. The variance will provide substantial justice to the applicant as well as neighboring property owners.

Applicant Response:

"Granting the build of the 2nd story to the existing structure (straight up) will increase the living space 2x from 570 to 1140 sq. ft. The other property owners will experience a more up-to-date exterior versus a house built in 1934".

Planner Response:

Whether granting the variance would provide substantial justice to both the applicant and neighboring property owners is a discretionary determination to be made by the Zoning Board of Appeals based on the evidence presented and the applicable variance standards. Approval of the request would allow the applicant to expand the existing dwelling vertically while maintaining the existing building footprint and would not increase the degree of the existing side setback encroachments.

Correspondence from the adjacent property owner at 301 Park Avenue has been included in the meeting packet for the Board's consideration. The correspondence raises concerns regarding trespassing, aerial encroachment, privacy, potential property damage, erosion, stormwater drainage, and fire safety. Several of these matters, including compliance with building and fire codes, stormwater management, and soil erosion control, are addressed through separate permitting and regulatory processes rather than through the variance review.

Staff notes that both the applicant's property (305 Park Avenue) and the adjacent property (301 Park Avenue) contain dwellings that encroach into the required side setbacks. Based on the available records, these encroachments result from the age and placement of the structures, which predate the Village's current zoning regulations.

The Board should consider the evidence presented and determine whether the requested variance would provide substantial justice to the applicant while avoiding unreasonable impacts on neighboring properties.

C. The variance requested is the minimum variance needed to provide substantial relief to the applicant and/or be consistent with justice to other property owners.

Applicant Response:

"The additional 2nd floor structure will be built straight up from the existing house and will stay within the 30 foot height requirement".

Planner Response:

The applicant is requesting the minimum variance needed to proceed and is proposing only to build vertically (and within the 30-foot height requirement of the zoning district). There will be no changes made to the footprint of the structure so nonconformity of the structure will not be expanded. Many properties within the Village are located on non-conforming lots due to the nature of being a waterfront community. If this property were located on a larger parcel there would be no issue with the height at which the applicant is proposing. We would recommend the Board of Zoning Appeals and Planning Commission review this section of the ordinance for consideration of amendment.



D. The need for variance(s) is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district.

Applicant Response:

"The current house (built in 1934) was built on one property that has since been sub-divided into two lots (Lot 65 & Lot 66 shown on the attached survey). The dividing line encroaches the current variance requirements of both residences as currently [illegible]"

Planner Response:

Based on available property records and the original plat, staff has determined that the need for the requested variance is not the result of a division of the property, as indicated in the applicant's statement. Rather, the existing dwelling predates the adoption of the current zoning regulations and associated setback requirements. The structure is therefore legally nonconforming with respect to the applicable setbacks.

The Board must determine whether the need for the variance arises from unique circumstances peculiar to the property, rather than conditions generally applicable to other properties within the zoning district. In making this determination, the Board may consider the age and existing placement of the dwelling, the property's dimensions and configuration, and any other site-specific characteristics relevant to the requested variance.

E. The problem and resulting need for the variance has been created by strict compliance with the Zoning Ordinance, and not by the applicant or applicant's predecessors; it is not self-created.

Applicant Response:

"The problem resides with the property sub-divided into two lots with minimal room between the house and lot line. The houses are staggered and therefore are not next to each other. The request to add a second floor does not add to the current situation (building straight up on existing building)"

Planner Response:

Based on the available information, the need for the requested variance appears to result from the location of the existing dwelling, which predates the current zoning regulations and setback requirements, rather than from an action taken by the current property owner or the applicant's predecessors. The proposed addition would be constructed vertically within the existing building footprint and would not further increase the existing setback encroachments.

F. Granting the variance will not impair the public health, safety, comfort, or welfare of the inhabitants of Lake Orion.

Applicant Response:

"Adding a second story to the existing building (straight up) does not change the existing footprint of the building and will not impair any of the noted concerns"

Planner Response:

Because the proposed addition would be constructed within the existing building footprint, the request would not increase the degree of the existing setback encroachments. Based on the information submitted, staff has not identified evidence that granting the requested variance would impair the public health, safety, comfort, or welfare of the inhabitants of Lake Orion.



Correspondence from the adjacent property owner has been included in the meeting packet for the Board's consideration. The correspondence raises concerns regarding privacy, trespassing, aerial encroachment, potential property damage, erosion, stormwater drainage, and fire safety. As discussed previously, several of these matters are addressed through separate permitting, code enforcement, or other regulatory processes rather than through the variance review. The Board should consider any relevant evidence presented in determining whether the requested variance would adversely affect the public health, safety, comfort, or welfare.

RECOMMENDATION

Recommendation if the Board Finds the Variance Meets the Standards

The Board of Zoning Appeals may grant a variance from the requirements of the Zoning Ordinance only upon finding that the applicable variance criteria described above have been satisfied.

In making its determination relative to the requested variance, the Board shall specify the grounds for its decision. Subject to any additional information presented by the applicant, the Board, or the public during the public hearing and incorporated into the record, if the Board finds that the requested variance provides substantial justice to both the applicant and neighboring property owners, staff finds that the request satisfies the applicable variance criteria and recommends approval based on the following findings of fact:

1. The current zoning regulations unreasonably prevent the owner from using the property for a permitted residential purpose.
2. Granting the variance provides substantial justice to both the applicant and neighboring property owners because the proposed addition is limited to the existing building footprint and does not increase the degree of the existing setback encroachments.
3. The requested variance represents the minimum relief necessary to permit the proposed improvement.
4. The need for the variance results from the existing location of the dwelling, which predates the current zoning regulations, and from circumstances peculiar to the property.
5. The applicant has demonstrated that the hardship was not self-created.
6. Granting the variance will not impair the public health, safety, comfort, or welfare of the inhabitants of the Village of Lake Orion.

Recommendation if the Board Finds the Variance Does Not Meet the "Substantial Justice" Criterion

The Board of Zoning Appeals may grant a variance from the requirements of the Zoning Ordinance only upon finding that the applicable variance criteria described above have been satisfied.

In making its determination relative to the requested variance, the Board shall specify the grounds for its decision. Subject to any additional information presented by the applicant, the Board, or the public during the public hearing and incorporated into the record, if the Board finds that the requested variance would not provide substantial justice to neighboring property owners, staff recommends denial of the request based on the following finding:

1. The Board has determined that the applicant has not demonstrated that granting the requested variance would provide substantial justice to neighboring property owners as required by the Zoning Ordinance and the Michigan Zoning Enabling Act.

Because all required variance criteria must be satisfied before a variance may be granted, the failure to make an affirmative finding on this criterion requires denial of the request.



We look forward to reviewing these findings and recommendations with you. Please feel free to contact us with any questions.

Respectfully submitted,

McKENNA

Jacob VanBoxel, MSA
Principal Planner

Sommer Nafal, NCI
Assistant Planner

cc: Village Clerk: Sonja Stout, 21 E. Church Street, Lake Orion, MI 48362
Property Owner: Paul Tracey, 301 Park Ave., Lake Orion 48362